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World Chronicle

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GUEST: **EDUARDO VALENCIA-OSPINA**
Registrar
International Court of Justice

JOURNALISTS: James Bone, *The Times* (London)
Walter Pfaeffle, Kuwait News Agency

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INTERNATIONAL COURT OF JUSTICE

EDUARDO VALENCIA-OSPINA, Registrar of the International Court of Justice (ICJ), describes the work of the legal organ of the United Nations. The World Court's mandate is to interpret international law and issue judgements accordingly. It deals primarily with cases involving disputes among states. Upon the approval of the General Assembly or the Security Council, international organizations can also seek advisory opinions from the Court. Judges serving on the Court are elected simultaneously by the General Assembly and the Security Council and usually represent the different regions and cultures of the world.

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ANNOUNCER: From United Nations Headquarters in New York, this is **World Chronicle**, an unedited interview programme about major global issues. Here now to introduce our guest is the host of today's **World Chronicle**.

LITTLEJOHNS: I'm Michael Littlejohns, and this is **World Chronicle**.

There's no doubt that when the United Nations is mentioned, people often think of the General Assembly or the Security Council. But there are other organs which play an important part in the work of the world organization. One of them is the International Court of Justice, also known as the World Court. Seated in the Hague in the Netherlands, the 15-judge court serves as the principal judicial organ of the United Nations.

Our guest today has a special interest in the issue of international law. He is Eduardo Valencia-Ospina, the Registrar of the International Court of Justice. Joining me to talk with Mr. Valencia-Ospina are James Bone of *The Times* of London and Walter Pfaeffle of the Kuwait News Agency. Mr. Valencia-Ospina, welcome to World Chronicle.

Mr. Registrar, please tell us a bit about your office and the duties that you perform.

VALENCIA-OSPINA: The Registrar has basically two kinds of functions. He's the highest administrative officer of the Court --

LITTLEJOHNS: Sort of secretary-general of the Court.

VALENCIA-OSPINA: In fact, that would be a more appropriate name, and it has all of the responsibilities that attach to the function of a secretary-general of an institution, and also has important judicial functions described in the Statute and in the Rules of Court. And this means the Registrar participates both in the judicial deliberations and in the drafting of judgements, and at the same time provides, as head of the Registry, the legal assistance that the judges require, apart from discharging all the managerial functions that go with the office.

LITTLEJOHNS: You have a large staff?

VALENCIA-OSPINA: The Court has a very small staff. We are only 54, and that includes both Professional and General Service.

LITTLEJOHNS: The Professionals are all lawyers?

VALENCIA-OSPINA: The Professionals are not lawyers. Because of the character of the institution, we, unlike other principal organs of the United Nations, do not enjoy the common support services that the General Assembly and the Security Council do. We have to have our own secretariat, a mini-secretariat, and most of these

Professionals are in fact people dealing with finance or translation or other subjects. Our lawyers are quite few.

LITTLEJOHNS: The Court is not in constant session?

VALENCIA-OSPINA: The Court is in constant session. We don't have judicial vacations, although they are provided for in the Statute, but that doesn't mean that the Court is every day in deliberations.

LITTLEJOHNS: Or that all 15 judges are deliberating.

VALENCIA-OSPINA: It would depend on whether the case is before the full Court, as is often the case, or whether the case is before a chamber of the Court, in which case only those members of the Court would be sitting at that time. At present we have 10 cases, and none of those cases is before a chamber.

LITTLEJOHNS: James Bone has a law degree, so he's a perfect man to ask you a question.

BONE: Your Court deals only with disputes between governments, but there have been a lot of moves recently to set up some kind of international court with jurisdiction over individuals. Already we have the court on war crimes in the former Yugoslavia,[1] which can actually -- it also sits in The Hague, and can actually try individuals. And we're going to have the court on the genocide in Rwanda,[2] which again will be able to try individuals. Do you think it was a weakness in the World Court that it wasn't able to bring individuals before it and hold individuals accountable?

VALENCIA-OSPINA: No, I wouldn't think there is a question of weakness there. I think one of the presiding principles in establishing various international tribunals is the principle of specialty. And our Court, whose Statute is to the largest extent the same Statute as that of the Permanent Court[3] during the League of Nations, still embodies the very basic principle of international law and adjudication at that time, according to which only States were subjects of international law, not even international organizations, much less individuals. Of course, international law has evolved over the years, and you are right in pointing out that now the individual is a subject of international law and can be tried before an international court. But the Statute as conceived and as presently drafted prevents any individual, whether a human being or a corporation, to have a standing as such before the Court.

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[1] The International War Crimes Tribunal for the Former Yugoslavia.

[2] The International Tribunal for Rwanda.

[3] The Permanent Court of International Justice.

BONE: Can I pick up on something you said about international organizations? During the UN operation in Somalia, the United Nations was criticized; the UN peace-keeping force was criticized for taking prisoners and not treating them according to the Geneva Conventions. The allegation was that the United Nations itself was breaking the Geneva Conventions. Could somebody, could another government or somebody take the United Nations itself before the World Court, or is that not allowed?

VALENCIA-OSPINA: It's not possible. Any international organization is susceptible of committing wrongdoings, and clearly a government could bring an international organization to court, but not to our Court. International organizations have not been given the standing either to appear as applicants or as respondents. The only avenue that is open to international organizations to come to our Court is the advisory jurisdiction of the Court. International organizations, the General Assembly, the Security Council, the ECOSOC, and specialized agencies and other international organizations that might be authorized by the General Assembly are entitled to request advisory opinions from the Court.

LITTLEJOHNS: What does "advisory opinion" mean?

VALENCIA-OSPINA: An advisory opinion is a request for an opinion from the Court on a legal point at the initiative of one of these organs or institutions I have mentioned. The distinction between an advisory opinion and a judgement -- and a judgement is given in a contentious case between States -- is fundamentally that advisory opinions are not binding, whereas judgements are binding on the parties. But in terms of the procedure that the Court follows to arrive at its decision and its contribution to the development of international law, there is no difference between an advisory opinion and a judgement.

PFAEFFLE: Mr. Registrar, I'd like to come back to the former Yugoslavia, my colleague James just mentioned. Both Bosnia and Serbia and Serbia and Montenegro have seized the Court on the matter of genocide, yet the Court declared itself as not having jurisdiction over this question. Could you explain why?

VALENCIA-OSPINA: No, I think there is a misapprehension there. The Court has not declined to exercise jurisdiction. What has happened is this: Bosnia and Herzegovina brought an action against the former Yugoslavia, Serbia and Montenegro, alleging violations by the latter of the Genocide Convention.[4] And this constitutes the

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[4] Convention on the Prevention and Punishment of the Crime of Genocide (United Nations, 9 December 1948).

merits of the case. And the case is very much before the Court, but the Court has not passed upon the merits yet. We are at the stage of written pleadings by the parties.

At the same time, Bosnia made a request from the Court for the granting of provisional measures of protection, a sort of injunction you would say in municipal law. And it did so twice. Now, it is not that the Court refused; the Court refused to grant the measures requested because it considered that in the circumstances of the case the request exceeded what could legitimately be asked as a measure of protection. But the fact that those measures have been rejected does not mean that the Court has not exercised its jurisdiction, and that it has not -- if it finds that it has jurisdiction, if the jurisdiction is challenged by Yugoslavia, then go into the merits of the case.

BONE: Well, what provisional measures of protection did they request? Was it the lifting of the arms embargo on the Bosnian Government?

VALENCIA-OSPINA: Well, that was one of the -- there was a very long list of measures of protection, and one of them was the lifting of the arms embargo, and the Court found that there was no relationship between this measure requested and the interest protected under the main case, that is, the Genocide Convention violations.

BONE: Well, let me ask you, that raises the question of the clash between the Court and the Security Council. The Security Council in New York, a political body, votes to impose an arms embargo. Is the Court thus, therefore, at some point able to nullify what the Security Council does, or is it absolutely unable to do that in international law?

VALENCIA-OSPINA: The question remains an open question, and is very much debated these days in the light in particular of two other cases that are before the Court, brought by Libya against the United Kingdom and the United States in the Lockerbie case, of which the Security Council also has been seized and has taken action. Even at the time the Court was seized and having hearings on the case.

LITTLEJOHNS: This is the bombing of the Pan American aircraft.

VALENCIA-OSPINA: The Pan American aircraft. I would not characterize the situation as one of a clash. What we have here is two principal organs of the Organization, each one with its own competence, and each one exercising its own competence within the parameters that the Charter has assigned to each. None is subordinate to the other. The Security Council has responsibility, and a main responsibility, for the maintenance of peace and security and can impose sanctions under Chapter VII. The Court is supposed to deal with disputes under international law. But every dispute, obviously, no matter how political in character it could appear, will have a legal component and mustn't prevent the Security Council from dealing with the political

aspects of that dispute and, at the same time, the Court from dealing with the legal aspects of that dispute. So that from that point of view, what you would have is perhaps a parallel exercise of competencies, but not one that would lead necessarily to clashes. Obviously, the Security Council has the power -- to pick up on your previous question -- to request advisory opinions from the Court, and one could imagine situations where if there was not a great pressure of time the Security Council might wish to request from the Court an advisory opinion on legal points that would clarify their own position on the political issues. But the Security Council has not of late used that power. Most of the requests for advisory opinions have come rather from the General Assembly.

BONE: But on the particular case of Libya, Libya argues -- I mean, Britain and America say that there are two Libyans who bombed the Pan Am airliner, and that Libya must surrender them for trial in Britain and the United States. And the Security Council has imposed limited sanctions on Libya. And Libya argues that under the Montreal Convention on airline terrorism it has a responsibility to investigate itself and to try the people in Libya if it thinks that's warranted. And Libya seems to have a fairly strong case legally, yet politically of course it has a very weak case. Is it actually possible for the World Court to rule that the sanctions imposed by the Security Council are illegal sanctions?

VALENCIA-OSPINA: The question of the control of constitutionality by the Court of the decisions of the Security Council, of course, as I said, is an open question. Neither in the jurisprudence of the Court nor in the decisions of the Council itself can one find at present any clear indication of how the two organs think about this problem. But there may be an indication already in the Libyan cases, because there as well Libya asked the Court for the granting of some interim measures of protection, and the Court denied those measures. But in so doing, and with reference to the Montreal Convention that you have cited, Mr. Bone, the --

LITTLEJOHNS: That's the Montreal Convention.

VALENCIA-OSPINA: The Montreal Convention on the acts of terrorism against civil aircraft.[5] In that order, denying the request for interim measures, the Court indicated that it was doing so because, in its opinion, Article 103 of the Charter governed the situation, and, as you know, under that Article the Charter of the United Nations prevails over any other international convention, including the Montreal Convention. But the very fact that the Court was free to say so may indicate that the

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[5] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971).

Court, rather than shrinking from its responsibility, has in fact taken a decision as to the proper interpretation and application of a Charter provision.

LITTLEJOHNS: This is World Chronicle. Our guest is Eduardo Valencia-Ospina, Registrar of the International Court of Justice. Walter Pfaeffle.

PFAEFFLE: Let's stay with this question of Libya. Is it possible for the Court to move on its own, or does one of the parties have to seize the Court, to use legal language?

VALENCIA-OSPINA: The Court cannot, *propria motu*, take up a case. It has to be seized by the parties, by one of the parties, or by both if the case comes by special agreement to the Court. In the question of interim measures -- but interim measures are decided by an order, and there is also a debate whether these orders are compulsory or not -- the Court maintains the situation under review and could give an order on its own initiative if it considers that the situation has aggravated itself. But in terms of initiating a judicial proceeding before the Court, it is only open to States parties, yes.

PFAEFFLE: I have a question about a concrete case. Now, the United Arab Emirates, with the backing of the Gulf Cooperation Council, has asked to have the World Court settle the matter of those three islands that are occupied by Iran. Where is that case? Has it been brought to the Court, or have you been...?

VALENCIA-OSPINA: Well, this is the expression of a wish from a sovereign State as to the means it would prefer to be used to settle that particular dispute. As far as I know, Iran has not reacted to that suggestion. But independently of the expression of a wish, what is important is to find a basis for jurisdiction for the United Arab Emirates and Iran to come to the Court. And even if the United Arab Emirates would accept the compulsory jurisdiction of the Court by acceding to the optional clause, if Iran did not do the same it would be impossible to bring this case to the Court. The consent of both States is indispensable. There could be other bases for jurisdiction, but this of course has not been mentioned by the United Arab Emirates.

PFAEFFLE: But in the case of Bahrain and Qatar, I believe you do have -- you are looking at the situation?

VALENCIA-OSPINA: Yes, Qatar and Bahrain, their dispute is before the Court, and in fact the Court has given a judgement that could be regarded as an interim judgement recently in an action brought by Qatar against Bahrain. And they're --

LITTLEJOHNS: In connection with what, Mr. Registrar?

VALENCIA-OSPINA: In connection with sovereignty over certain island shoals and maritime delimitation between the two States. And there the question has been raised squarely before the Court whether the Court is competent or not, based in the

argument of Bahrain on the fact that Bahrain alleges that it has not consented to the jurisdiction of the Court. And we expect -- the Court has given a deadline until the end of November of this year to both parties to, in the light of this judgement, bring the whole of the dispute to the Court. We don't know what the position of the parties will be. We are awaiting their reaction.

BONE: What kind of sanctions does the World Court have, if it decides in favour of one country?

VALENCIA-OSPINA: Well, sanctions as such are not the province of the Court. Sanctions remain the province of the Security Council. It is often said that the Court, in the end, is ineffectual because its judgements cannot be implemented; but if that is so, and practice in reality proves that it's precisely the opposite, it's not because the Court itself would be unable to implement its own judgements. The Court has not been vested with that power, as in a municipal system of law where you have a division of powers and it is the executive branch of government, the one that has to coerce and execute judgements. Granted, courts may have bailiffs or sheriffs, but it's not the same. We in the International Court are only given the authority to say the law, who is right, who is wrong. The implementation of the judgement, if one party fails to do so, is left to the Security Council.

BONE: But what happens in a case like that? I mean, I think there was a case between Nicaragua and the United States several years ago to do with the CIA mining Nicaraguan harbours. And what was the outcome of that case?

VALENCIA-OSPINA: Well, the outcome of that case was that the Court found that the United States was in violation of international law on a number of grounds, and it then left open the question of compensation that should be paid by the United States to Nicaragua for a subsequent stage of the proceedings. But the Court never had the opportunity to reach that point because the case was withdrawn by Nicaragua before the Court could consider the matter of compensation. So that the judgement of the merits was given --

BONE: But did the United States recognize that judgement?

VALENCIA-OSPINA: It's difficult to say that it did not. In fact, the United States maintained, and also with the present government of Nicaragua, cordial relations, and there is no indication in the light of how those relations have developed that the US would not have complied with the substance of the Court's judgement.

LITTLEJOHNS: What is the composition of the Court in terms of the judges? I mean, there are 15 judges, they're chosen by the General Assembly in cooperation with

the -- in tandem, in fact, with the Security Council, and is there some requirement of equitable geographic distribution? Or how is it done?

VALENCIA-OSPINA: There's no precise determination as to the geographical distribution. What is important is that the judges represent the various legal systems and various cultures in the world. In fact, as the Court is composed of 15 judges, the geographical distribution is very much patterned on that of the Security Council. So that the five permanent members of the Security Council happen to have a national each in the Court, and the other 10 posts are distributed among nationals of other States. But there's not, unlike in the Council, any specific provision that would indicate that it has to be so.

BONE: You talk about the representation of different legal systems. Of course you have the Roman legal system, or the common law system of the English law, but you also have Islamic law. Have you had any case in which the judgement has reflected the precepts of Islamic law at all?

VALENCIA-OSPINA: Well, the question of having different legal systems represented in the Court is one that has to do with the qualifications of those who will become judges. That is not that we would apply necessarily one branch of law as opposed to another in our judgements, because we apply international law. And international law has benefited from common law, from civil law and from Islamic law. But the body of law we apply is not each one of those individual components, it's rather international law.

BONE: Well, I'm curious if there are any precepts of Islamic law that have actually entered into international law, noticeably entered into international law as more and more countries adopt Islamic systems.

VALENCIA-OSPINA: Oh, very much so. The Islamic system of law is a very ancient system of law, and international law owes as much to the Islamic system of law as it does to the Chinese law or even a European law, that is a more recent one compared to those other two.

LITTLEJOHNS: Walter, you were trying to get a question in there.

PFAEFFLE: Yes, Mr. Registrar, the Secretary-General said in his report a record 13 cases were brought to the Court in the past year. Now, looking at these cases, they're mostly between small States, and I would like to come back to James's point, the matter of Nicaragua in the early 80s. It seems like the Court can only act in a way that the big powers allow it to act. Isn't that pretty frustrating for someone sitting on the Court?

VALENCIA-OSPINA: Well, I would say that the very example you have given shows clearly that the opposite is the true situation. Because there you had a case of a very small country, Central American country, Nicaragua, against the United States, one of the big powers at the time, and still --

PFAEFFLE: But the perception is pretty much that the United States didn't want to have anything to do with it, so.

VALENCIA-OSPINA: No, the United States did appear before the Court, it argued the jurisdictional phase of the Court, it argued a request for provisional measures that had been made before the Court, and then it withdrew at the merits stage. But legally the United States was as bound to continue --

LITTLEJOHNS: Mr. Valencia-Ospina, that's all the time we have. Thank you for being with us on this edition of World Chronicle. Our guest has been Eduardo Valencia-Ospina, Registrar of the International Court of Justice. He was interviewed by James Bone of *The Times* of London and Walter Pfaeffle of the Kuwait News Agency. I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of World Chronicle.

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